

Vermont Office of Public Guardian Annual Report

State Fiscal Year 2022



Developmental Disabilities Services Division
Department of Disabilities, Aging and Independent Living
Agency of Human Services | State of Vermont

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Purpose of the Office of Public Guardian (OPG)

The Office of Public Guardian (OPG) operates within the Vermont Developmental Disabilities Services Division in the Department of Disabilities, Aging, and Independent Living (DAIL). Individuals receiving guardianship from OPG are in the custody of the Commissioner of DAIL and the assigned guardians act as designees of the Commissioner.

Public guardians are appointed by the Family Court (Title 18 Chapter 215) and Probate Court (Title 14 Chapter 111 § 3091) to assist individuals to make basic life decisions when the court finds that they are not able to make certain decisions independently, that alternatives to guardianship are insufficient, and there are no suitable and willing private guardians.

According to the policy and laws of the State of Vermont, guardianship shall be used only as necessary to promote an individual's safety and wellbeing and to protect the individual from violations of his or her human and civil rights.

Guardianship shall encourage maximum self-reliance and independence and only the least restrictive form of guardianship shall be ordered based on the individual's abilities and needs. Public guardianship is only intended to be used when the court is unable to appoint a suitable and willing private guardian and the individual lacks the financial resources to pay for a professional private guardian.

Under Vermont law, OPG is authorized to provide guardianship for:

- Adults (18 or older) with developmental disabilities (DD), **or**
- Persons 60 years of age or older (older Vermonters) with disabling cognitive impairment, **and**

- Who require assistance with basic life decisions, **and**
- For whom a suitable and willing private guardian cannot be found.

Philosophy and Principles

When making decisions on behalf of a person under guardianship we consider the following:

- Is this decision within the powers granted by the court?
- Does this decision require court approval?
- What does the person prefer? (Substituted Judgement)
- Will this decision put the person at a risk of harm that is too high? (Best Interest)
- Will this decision promote the person's independence and self-reliance?
- Does this decision promote and protect the civil and human rights of the person?
- Do we need more information and opinions?

Guardianship Powers

Family Court orders of guardianship can include the following areas:

- **General supervision** - Decisions about where someone lives, types of services, and supports, school or work, sale or encumbrance of real property etc.
- **Contracts** - Decisions about approving or withholding approval for formal agreements such as rental/lease arrangements, cell phones, car loans
- **Legal** - To obtain legal advice and to commence or defend against judicial actions

- **Medical and dental** - To seek, obtain, and give consent to initiate or discontinue medical and dental treatments

Probate Court orders of guardianship can include the above, plus the powers to:

- **Sell or Encumber Personal or Real Property** (as a separate power)
- **Exercise Supervision over Income and Resources**

It should also be noted that, although the court authorizes a guardian to exercise these powers and make decisions on behalf of people, guardians cannot force people under guardianship to comply with those decisions.

Other Functions

In addition to serving as guardian, the Office of Public Guardian:

- Serves as **representative payee** receiving and managing Social Security or Supplemental Security Income for 287 individuals in State Fiscal Year 2022 (SFY 2022).
 - Many of these individuals are also under public guardianship.
 - One fourth of these individuals do not have a guardian and the rep payee service is an effective alternative to guardianship.
- Provides short-term **consultation** to individuals or teams when this can provide a less restrictive alternative to guardianship or ease the transition out of guardianship.
- Provides **public education** on guardianship and alternatives to guardianship.
- **Recruits and assists private guardians** and assists in developing individualized alternatives to guardianship.

- **Arranges and manages court-ordered evaluations** for both public and private guardianship proceedings (240 ordered in SFY 2022, of those 12 were withdrawn or individual died before completion).

Office of Public Guardian Staff

During SFY 2022, the Office of Public Guardian was staffed by 29 full-time employees and 1 part-time temporary employee, including:

- 19 Guardians and 5 Supervisors with caseloads ranging from 22-35 individuals
- 1 Administrative Services Coordinator
- 1 part-time Administrative Services Coordinator
- 2 Community Financial Specialists (representative payee)
- 1 Intake and Diversion Specialist with partial caseload
- 1 Director with partial caseload

During SFY 2022, 4 OPG staff retired or resigned. This resulted in 2 internal promotions, for a total of 6 new hires.

Guardians are available to respond to emergencies 24 hours per day, 7 days per week. The strength of the program is a result of the depth of experience of the guardians, the strong relationships that are formed with people under guardianship and with service providers, and a strong commitment to advocacy for vulnerable adults.

People Served

During State Fiscal Year 2022, the Office of Public Guardian served the following number of people (current and terminated orders):

Guardianship (DD/Family& Probate Court)	613
Guardianship (60+/Probate Court)	144
Consultation/“Case management”	2
Total Assigned to Guardian Caseloads	759
Rep Payee not in guardianship	71
(Total served Rep Payee 287)	
Unduplicated Total Served by OPG	830
New People Served in SFY 2022:	
People with DD	24
Older Vermonters	44
Case Management	2
Total New People Served in SFY 2021	70
People Terminated from Services in SFY 2021:	
People with DD (Deceased 21, Powers Returned 17, Private 2)	40
Older Vermonters (Deceased 24, Powers Returned 6, Private 2)	32
Case Management (Independent)	0
Total People Terminated from Services in SFY 2021	72

Reasons for Public Guardianship

The over-arching reason why people who need guardianship and come into public guardianship is the lack of suitable and willing family or friends to assume this responsibility. Within that context, there are numerous variables associated with each referral that may be instructive to consider.

In SFY 2022, 68 people were placed on Public Guardianship for the following reasons:

- 40 people were placed on public guardianship due to risk of harm, poor/dangerous decisions, self-neglect, need for support services, urgent need for medical care, and declining abilities and other issues associated with aging.
- 9 people transferred to public guardianship when their private guardians resigned, died, or were removed by the court.
- 7 people were placed on public guardianship because they needed emergency medical care and/or needed to be discharged from the hospital and couldn't be placed without a guardian.
- 3 people aged out of custody from the Department for Children and Families (DCF). This happens when a young adult turns age 18 and is no longer eligible for DCF custody. Often, people who are placed on public guardianship from DCF custody come with backgrounds of significant abuse, neglect, exploitation, and serious emotional or behavioral challenges.
- 9 people were placed on public guardianship because of an investigation of abuse, neglect, or exploitation by Adult Protective Services.

Petitions which resulted in public guardianship in SFY 22:
In descending order of frequency, public guardianship was successfully sought by the following petitioners:

- Hospitals: 18
- Family members/friends/private guardians: 14
- Developmental and Mental Health/TBI Agencies: 11
- Nursing homes/Residential care homes: 9
- APS: 9
- DCF: 3
- Attorneys: 2
- Direct orders from the court: 1
- Self: 1

Challenges Of SFY 2022

In addition to more typical challenges facing OPG in the past and present, SFY 2022 was another year of operations during the COVID-19 pandemic. OPG continuously adjusted its practices of monitoring the health and safety of our clients through mostly virtual means, for the first half of SFY 2022. Modified operations reduced the ability of guardians to monitor the well-being of people under guardianship, placing a great deal of stress on individuals and guardians, who typically rely on face-to-face contact. In February 2022, after a relative decline in COVID-19 cases in VT and loosening of VT Department of Health mandates, OPG moved to a hybrid model of virtual and in-person visits, which continued throughout the year.

In SFY 2022, the labor shortages in both the developmental disability and aging fields reached a crisis level. Prior to the COVID-19 pandemic, staffing was a problem, and the pandemic only exacerbated the issue. Because of these staffing shortages, people under guardianship were left with no community services and many remain without them or with drastically reduced services. The statewide shortage of housing options for people with developmental disabilities and the older Vermonters also reached critical levels. Of significant note, on 12/3/21, the Francis Foundation, a non-profit developmental disability agency who served 11 individuals under public guardianship with intense clinical needs, closed its services. Their closure resulted in public guardians having to find designated agencies or specialized service agencies to deliver services and supports to these individuals.

OPG continued to face the ongoing challenges to its capacity in three areas:

1. Atypical caseload numbers
2. Severity of need
3. A growing number of individuals who disregard and reject assistance of the guardian.

Caseload Numbers

A significant challenge facing OPG is the increasing number of people under our guardianship as compared to the number of guardians assigned to support them since 2006. As part of overall cuts in positions within DDSD in the early 2000's, OPG currently has 1 fewer guardian position despite a 12% increase in caseload. At present, the average caseload per guardian (including supervisors) has increased to 32, which is over 1.5 times the nationally recommended limit of 20 individuals for guardians and over 3 times the nationally recommended limit of 10 individuals for supervisors. Because of the increasing number and complexity of individuals served, the guardians' ability to meet requirements and expectations are more and more constrained.

The Vermont guardianship statutes require that guardians maintain close contact with persons under guardianship, regardless of where they reside in the state. This is necessary to be as knowledgeable as possible about the person's wishes and desires, monitor their safety and well-being, and advocate on their behalf. This requires regular personal contact due to the communication difficulties experienced by many individuals with cognitive impairments and the complexity of people's needs. At minimum, this protracted period of over-extension has taxed the guardians, contributing to lower morale, and increasing burn-out, as well as impinging upon the quality of services able to be provided by OPG. Left unaddressed, this strain is likely to place the individuals, guardians, and ultimately DAIL at risk due to important factors that will be overlooked with the shortage of time to spent on each individual under guardianship.

Severity/Complexity of Need

Another main challenge for OPG is the increasing level of complexity that individuals coming into guardianship present. This includes the following issues:

- The *proportion of elders* in OPG's guardianship (as compared to people with developmental disabilities) has been steadily increasing as the population of the state ages. Guardianship duties and responsibilities are often broader and more time-consuming for elders, as they tend to have possessions, real estate, and complicated financial situations that guardians must resolve. It is also increasingly difficult to find appropriate services or placements, as there is no designated system which is obligated to serve this population.
- Obtaining and maintaining residential supports for some *older Vermonters with mental health issues or challenging behaviors* whose needs are not being met at home, in a residential care home, or in a nursing home is particularly challenging. Some of these individuals remain at the emergency room, hospital or even jail for lack of an alternative for an extended period of time. In fact, some older Vermonters who present with seriously challenging behaviors and/or reputations, are refused admission to every nursing home in the state of Vermont and are placed in out of state facilities who will accept them. The guardian must then travel out of state to maintain contact and must contend with the complications of registering Vermont guardianships in another state or complying with the regulations of other states.
- Many nursing homes refuse to admit people without advance directives or guarantee of payment and as a result guardianship is sought to secure admission.
- Young adults leaving *DCF custody* who have experienced years of family dysfunction, abuse and neglect and then multiple placements. Some come directly to OPG from in state and out of state institutions, psychiatric hospitals, or jail. Despite concerted efforts to improve the process, the transition from DCF custody and services into adult guardianship and services is rarely smooth, and young adults often turn 18 without their benefits, services, and guardianship in place.

- Emergency guardianship for people referred by *Adult Protective Services* who have experienced abuse, neglect, or exploitation. Often these individuals wish to remain living with or supported by the perpetrators and the guardian must balance risk of harm with the person's wishes.
- Individuals with *dual-diagnoses* (a developmental disability and serious mental health or substance abuse disorder).
- Individuals who engage in *dangerous criminal behavior*.
- Individuals placed in public guardianship who *are not statutorily eligible* for public guardianship and are also not eligible for home and community-based services. The guardian is responsible for the individual's well-being and community safety, yet there are limited support services available.
- Providing guardianship to women who have children presents multiple issues and challenges.

Refusal of Assistance

Individuals who *actively resist supports* from a guardian and have the capacity to make other choices which may not be in their best interest require a tremendous amount of time and effort from a guardian but benefit very little from guardianship. These individuals do make and follow their own choices and decisions, such as leaving or refusing needed services, moving, being homeless, driving without a license, abusing substances, refusing medical treatment, and committing crimes. Sometimes people under guardianship go for long periods of time evading contact with the guardian. The evolution of social media has also complicated guardianship. Even if a vulnerable person is "hooking up" with people online and then meeting them in person for sex or other activities that may not be safe or desired by the person, making illegal threats, or posting pornographic images of themselves on social media, it is often not feasible or legal to restrict that person's access unless there is a court order restricting them. Other team members often

expect the guardian to authorize a restriction which is not court ordered and/or cannot be enforced.

Accomplishments in SFY 2021

- Continued to provide the best services possible during the pandemic.
- Strongly advocated for COVID-19 vaccinations/boosters for clients.
- Monitored the number of cases of COVID-19 and deaths from COVID-19 for people in public guardianship.
- Arranged/participated in monthly DAIL Ethics Committee Meetings to review any decision to withhold or abate medical treatment for any irreversible or terminal condition for individuals with developmental disabilities under Public Guardianship in which OPG has medical decisional making power. The committee provides oversight to ensure that individuals are afforded the same opportunities in life as those without a disability in end-of-life decisions and are guided by the wishes and desires of the individual.
- Reconfigured OPG supervisory groups so that the Community Financial Specialists (i.e., Representative Payees) now have a direct supervisor to work with on streamlining their process.
- Transferred services/supports of 11 people under public guardianship with intense clinical needs to various DA's/SSA's statewide after the Francis Foundation closed its services.
- Received one new position, a Community Financial Specialist.
- Opened and monitored several hundred STABLE accounts for individuals with developmental disabilities under Public Guardianship. These accounts allow people to save and invest money without losing eligibility for certain public benefits programs, like Medicaid, Supplemental Security Income (SSI), or Social Security Disability Income (SSDI).
- Onboarded 6 staff into new positions.
- Continued work on increasing the use of Supported Decision-Making and assisted in the creation of Supported Decision-Making handouts.

- Provided trainings to a variety of stakeholders regarding guardianship and its alternatives.

Goals for SFY 2022

- Continue work on increasing the use of Supported Decision-Making and Supported Decision-Making handouts. Supported Decision-Making allows an individual with a disability to retain the final say in her or his life. Under supported decision-making models, adults with a disability get help in making and communicating decisions, while retaining control over who provides that help.
- Continue to develop additional strategies for helping people learn skills required to make their own decisions and no longer have a need for a guardian.
- Advocate to the Legislature for new Public Guardian positions so caseload ratios decrease and align closer to the nationally recommended averages.
- Increase our assistance and training to private guardians if possible.
- Update OPG manual.

